IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

RPFC.No. 386 of 2007()

MC.188/2004 of FAMILY COURT, KOTTAYAM

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: REVISION PETITIONER/COUNTER PETITIONER

MICHEL JOHN, PANACHICKAL, KURUMANNU,
KADANADU.

BY ADV. SRI.P.C.HARIDAS

RESPONDENTS: PETITIONER

THRESSIAMMA JOHN, KUTTUPADAVIL,
PALAKKATTUMALA, KURICHITHANAM.

BY

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

R.P.(F.C.) No. 386 OF 2007

Dated this the 25th day of September, 2007

O R D E R

The revision petitioner who is the husband of the respondent herein challenges the order dated 8.5.07 passed by the Family Court, Kottayam in M.C.No.188/04 whereby the respondent sought a monthly maintenance of Rs.1,500/- per month. The Family Court ordered a monthly maintenance of Rs.400/- per month.

2. The marriage between the revision petitioner and the respondent was solemnized according to their religious rites on 26.1.92. After the marriage, the revision petitioner and the respondent lived together as man and wife in the family house of the revision petitioner. The wife left the matrimonial home on 29.4.92. While according to the respondent wife, the reason for separation with her husband was the ill treatment and cruelty meted out to her by the revision petitioner, according to the revision petitioner the said reason put forward by the revision petitioner is false.

3. On the side of the respondent/applicant she examined herself as PW1 and got marked Ext.A1 medical certificate. On the

side of the revision petitioner, he examined himself as CPW2 and also got examined a doctor as CPW1. Exts.X1 and X2 are the birth register and medical report got summoned at the instance of the revision petitioner.

4. The Family Court after trial, as per order dated 8.5.07 held that the respondent wife was deserted and neglected by the revision petitioner husband without paying her any maintenance and that the revision petitioner was having 10 cents of land and a residential house apart from help and assistance from his children born in his first wife. Accordingly, that court ordered him to pay monthly maintenance at the rate of Rs.400/- to the respondent wife payable from the date of petition, namely, 16.10.04. It is the said order which is assailed in this revision.

5. The learned counsel appearing for the revision petitioner made the following submissions before me in support of his challenge against the impugned order:-

The wife had left the matrimonial home on 29.4.92. Ext.X1, copy of the birth register issued from the Taluk Hospital, Pala would show that on 22.9.93 the respondent had given birth to a child. If so, the delivery of the child was one year and five months

after the marital partners separated. This corroborates the version of the revision petitioner that the respondent was leading an adulterous life. Eventhough the revision petitioner sought permission to examine the doctor at the Medical College Hospital, Gandhi Nagar who had issued Ext.X2 certificate to the effect that there was no evidence of any recent or remote delivery in the respondent wife, the Family Court has rejected the said request.

6. I am afraid that I cannot agree with the above submissions. Admittedly, the revision petitioner married the respondent on 26.1.92 and the said marriage is still subsisting without there being any application or order for divorce. First of all, the revision petitioner was not able to prove that Ext.X1 birth register pertains to the delivery of a child by the respondent wife. Her definite stand before the court below was that she has not given birth to any child so far. She had also emphatically denied all the allegations levelled against her that she was living in adultery. Ext.X2 medical report issued by the doctor from the Medical College Hospital, Gandhi Nagar would clearly show that there was no evidence of any recent or remote childbirth in PW1. If so, without proving non-access, it was not open to the revision

petitioner to lead evidence to show that his wife had given birth to a child out of adulterous relationship. Allowing him to do so, would tantamount to ignoring the presumption under section 112 of the Evidence Act which can be rebutted only in the mode mentioned therein, namely, proof of non-access by the husband to the wife for more than the period of gestation. Such being the position, the denial by the Family Court to allow the revision petitioner to examine the doctor who issued Ext.X2 medical report cannot be said to be illegal. The Family Court, who had the unique advantage of seeing the witness and assessing their credibility, has chosen to believe PW1 in preference to the oral and documentary evidence adduced by the revision petitioner. The quantum of maintenance awarded is also a paltry amount of Rs.400/- if at all the Family Court has erred it was on the side of showing extreme leniency towards the revision petitioner. I see no grounds to interfere with the order passed by the Family Court.

This revision is dismissed in limine.

(V. RAMKUMAR, JUDGE)

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